



# ***CITY COUNCIL AGENDA REPORT***

MEETING DATE: OCTOBER 19, 2010

ITEM NUMBER:

**SUBJECT: APPEAL OF REVOCATIONS OF ZONING APPLICATIONS ZA-89-25 AND ZA-92-10  
MINOR CONDITIONAL USE PERMITS FOR GARCIA RECYCLING CENTER  
739 WEST 19<sup>TH</sup> STREET**

**DATE: OCTOBER 7, 2010**

**FROM: DEVELOPMENT SERVICES DEPARTMENT**

**PRESENTATION BY: MEL LEE, SENIOR PLANNER  
KIMBERLY BRANDT, DIRECTOR**

**FOR FURTHER INFORMATION CONTACT: MEL LEE, (714) 754-5611  
[mlee@ci.costa-mesa.ca.us](mailto:mlee@ci.costa-mesa.ca.us)**

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## **RECOMMENDATION:**

Uphold or reverse the Planning Commission's decision to revoke the applications.

## **BACKGROUND:**

On July 12, 2010 and August 9, 2010, the Planning Commission considered Zoning Applications ZA-89-25 and ZA-92-10, minor conditional use permits for an existing neighborhood recycling facility (Garcia Recycling) located in the parking area of a retail shopping center. The zoning applications were called up for review to the Planning Commission by Commissioner Mensinger on June 9, 2010. Both zoning applications were revoked by the Planning Commission on a 4-1 vote (Vice Chair Clark voting no).

On August 16, 2010, the revocations were appealed by the Miles+Chen Law Group, legal counsel for Garcia Recycling, the business owner. The City Council hearing was scheduled for September 7, 2010, however, the City Council continued the hearing to October 19, 2010 to provide the applicant and staff additional time to review the legal issues raised in the appeal and subsequent correspondence submitted by the appellant.

## **ANALYSIS:**

### ***Responses to Appeal Application***

The responses to the applicant's issues raised in the appeal and subsequent correspondence were previously addressed in the City Council Agenda Report dated September 7, 2010, a copy of which is attached to this report (Attachment 4).

### **Updated Code Enforcement Activity**

The timeline of events has been updated to include recent code enforcement activity occurring after the September 7, 2010 City Council meeting, including an administrative hearing held between the applicant and Code Enforcement on October 5, 2010, as well as recent photographs of Garcia Recycling showing ongoing violations (Attachment 2).

### **ALTERNATIVES:**

The Council has the following alternatives:

1. Uphold the Planning Commission's decision to revoke Zoning Applications ZA-89-25 and ZA-92-10, based on the Planning Commission's original findings and the additional findings included in the attached resolution (Attachment 1).
2. Reverse the Planning Commission's decision to revoke Zoning Applications ZA-89-25 and ZA-92-10 and allow the recycling facility to continue to operate pursuant to the adopted conditions of approval and any additional modifications desired by City Council.
3. Refer back to Planning Commission for additional review with specific direction for potential modifications to the existing minor conditional use permits.

### **LEGAL REVIEW:**

The City Attorney's office has approved the attached resolutions as to form.

### **CONCLUSION:**

Planning Commission's decision to revoke Zoning Applications ZA-89-25 and ZA-92-10 was based on the evidence in the record presented during the public hearings. The City Council may uphold or reverse the Planning Commission's decision to revoke the applications, or send back to the Planning Commission for additional review.



MEL LEE, AICP  
Senior Planner



KIMBERLY BRANDT, AICP  
Development Svs. Director

DISTRIBUTION: City Manager  
Asst. City Manager  
City Attorney  
Acting Asst. Dev. Svs. Director  
Public Services Director  
Transportation Svs. Mgr.  
City Clerk (2)

Staff (4)  
Planning Staff (8)  
File (2)

Garcia Recycling Centers & Metals Inc.  
Attn: Jesus Garcia  
1115 S. Elliot Place  
Santa Ana, CA 92704

Russell Pange Trust  
1835 Newport Boulevard, #A109  
Costa Mesa, CA 92627

Miles+Chen Law Group  
Attn: Patricia J. Chen  
9911 Irvine Center Drive, Suite 150  
Irvine, CA 92618

Steve Chan  
720 Center Street  
Costa Mesa, CA 92628

- ATTACHMENTS:
1. Draft Resolutions
  2. Updated Garcia Recycling Timeline of Events from July 2009 to the Present and Exhibits
  3. Copies of Correspondence from September 7, 2010 to Present
  4. September 7, 2010 City Council Agenda Report and Attachments, Including Correspondence prior to September 7, 2010

File: 101910ZA8925ZA9210Appealupdatedreport	Date: 10-07-10	Time: 12:45 p.m.
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**ATTACHMENT 1  
DRAFT RESOLUTIONS**

**RESOLUTION NO. 10-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
COSTA MESA TO UPHOLD THE PLANNING  
COMMISSION'S ACTION TO REVOKE ZONING  
APPLICATIONS ZA-89-25 AND ZA-92-10**

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, in 1989, Zoning Application ZA-89-25 was filed by Jesus Garcia, authorized agent for Russell Pange Trust, requesting approval of minor conditional use permit for a recycling facility, located at 739 West 19<sup>th</sup> Street in a C1 zone;

WHEREAS, on November 6, 1989, the Zoning Administrator approved Zoning Application ZA-89-25 for a minor conditional use permit for a recycling center at the subject location;

WHEREAS, on December 1, 1992, the Zoning Administrator approved Zoning Application ZA-92-10 for a minor conditional use permit for the relocation and expansion of the previously-approved recycling center at the subject location;

WHEREAS, a review of the minor conditional use permits were requested by Planning Commissioner Mensinger to determine if the minor conditional use permits should be modified or revoked;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on July 12, 2010, and continued to August 9, 2010, and ZA-89-25 and ZA-92-10 were revoked by the Planning Commission;

WHEREAS, on August 16, 2010 an appeal of the Planning Commission's decision was filed by Miles+Chen Law Group representing the business owner of Garcia Recycling;

WHEREAS, on September 7, 2010, City Council considered the appeal of ZA-89-25 and ZA-92-10, which was continued to the hearing of October 19, 2010;

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A," the City Council hereby **UPHOLDS** the Planning Commission's action to **REVOKE** Zoning Applications ZA-89-25 and ZA-92-10.

**PASSED AND ADOPTED this 19th day of October, 2010.**

\_\_\_\_\_  
ALLAN MANSOOR  
Mayor, City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY CLERK OF THE  
CITY OF COSTA MESA

\_\_\_\_\_  
CITY ATTORNEY

STATE OF CALIFORNIA)

COUNTY OF ORANGE )

I, JULIE FOLCIK, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above Council Resolution No. 10\_\_ as considered at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2007, and thereafter passed and adopted as a whole at the regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2010, by the following roll call vote:

**AYES:**

**NOES:**

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the  
City of Costa Mesa this \_\_\_\_ day of \_\_\_\_\_, 2010

## EXHIBIT "A"

**FINDINGS**

- A. Revocation of ZA-89-25 and ZA-92-10 was initiated because the operation of the use (a recycling facility) was determined to constitute a public nuisance and to be noncompliant with conditions of approval, pursuant to Municipal Code Section 13-29(o) (Enforcement Authority). Based on the evidence submitted into the public record, the use is not being operated in compliance with the conditions of approval for ZA-89-25 and ZA-92-10, specifically:
1. The recycling facility is not being operated in a manner deemed compatible with surrounding properties and uses. From July 2009, to the present, the City has documented code enforcement and Planning staff inspections of the use identifying the following concerns: excessive noise related to employees pouring recycled materials into containers at the facility; odors stemming from used beverage containers, the operator's failure to maintain the cleanliness of the facility; customers loitering during and outside of business hours; and customers parking on adjacent properties to use the recycling facility. The conditions of approval of ZA-89-25 and ZA-92-10 were designed to minimize these types of impacts.
  2. The use creates a negative visual impact on West 19<sup>th</sup> Street, due to lack of property maintenance. Specifically, the containers generally have an unsightly, "battered" appearance; the landscape planters surrounding the facility have not been adequately maintained due to high use of the facility by customers; and the high volume of recyclables received at this location requires the daily staging of a commercial truck on a long-term basis, in lieu of a second recycling container.
  3. A significant degree of City staff resources has been devoted to the use as a result of complaints related to the use and continual enforcement of noise and property maintenance issues. The business owner/property owner has failed to rectify the problems to be in compliance with the minor conditional use permit requirements to the satisfaction of the City.
  4. Issues related to noise, odors, loitering, and property maintenance are not prevalent at other recycling facilities in the City as they are at this location. According to City records, the City has had no complaints related to noise, odors, loitering, property maintenance, etc. related to the operation of the recycling facilities at other locations in the City.
  5. Modifications to the conditions of approval for ZA-89-25 and ZA-92-10 are not sufficient to address the adverse impacts to surrounding properties. Revocation will require cessation of the current use and a similar use cannot be established in the future unless a new Zoning Application is submitted and approved.
  6. The intensity and scale of the recycling facility is inappropriate for a prominent parking lot location adjacent to West 19<sup>th</sup> Street, a major arterial designated as an "urban path" in the City's 2000 General Plan. Given the high volume of recycling occurring at this facility, the facility is considered out-of-scale with the intended function of neighborhood recycling facilities which may be in parking lots pursuant to a minor conditional use permit.
  7. If the minor conditional use permits are revoked, the City will remain in compliance with all applicable provisions of State Law as it pertains to recycling and waste management. Specifically, revocation would not result in an unserved

"convenience zone" as defined by State Law because other recycling alternatives including, but not limited to, existing recycling center locations, provisions for reverse vending machines, and other alternatives as specified in the bottle bill would continue to be applicable. Additionally, per the letter submitted into the public record by the Costa Mesa Sanitary District dated August 9, 2010, revocation of the minor conditional use permits would not compromise the Integrated Waste Management Plan because the City's Sanitary District separates recyclables from regular trash to comply with the applicable beverage container diversion goals.

8. The use is not being operated in compliance with the conditions of approval for ZA-89-25 and ZA-92-10 in that the original approval was for a neighborhood recycling facility approved to operate within the parking area for the 739 W. 19<sup>th</sup> Street property. Based on the evidence submitted into the record, the original operation has expanded to the scale and intensity of a regional recycling facility, processing approximately 4.2 million pounds of recyclable materials in 2008, based on the applicant's testimony. This expansion has resulted in a scale and intensity of use beyond the boundaries of the subject property, requiring the use of the parking area for the adjacent 709 W. 19<sup>th</sup> Street property (Smart & Final property) for the unloading of recyclable materials by customers.
9. Based on the photographic evidence prepared by staff and made part of the public record:
  - a. The use is operating off-site (on the adjacent Smart and Final property) in violation of ZA-89-25 and ZA-92-10, which was approved for the 739 West 19<sup>th</sup> Street property (subject site) only.
  - b. The use is in violation of the following Conditions of Approval of Zoning Application ZA-92-10, Minor Conditional Use Permit for a recycling center:
    - i. Storage of a commercial truck on the property to serve as additional storage area in lieu of a container is in **violation of Condition of Approval No. 3 for ZA-92-10**: "Any and all containers, with a maximum of two, shall be located at the northeast corner of the site as shown on the approved plans, and shall maintain a minimum setback of twenty (20) feet from the front property line."
    - ii. Materials kept outside the containers are in **violation of Condition of Approval No. 5 for ZA-92-10**: "All materials shall remain inside the containers."
    - iii. Not keeping the area free of debris, in **violation of Condition of Approval No. 6 for ZA-92-10**: "Applicant shall keep the area surrounding the container(s) free of debris."
10. The use is in violation of the City of Costa Mesa's Municipal Code, Title 20 (Property Maintenance) Standards.
11. Based on the evidence submitted into the record, the original operation has significantly expanded beyond the scale and intensity of a neighborhood recycling facility and is more comparable to a regional recycling facility. Orange Coast

College is considered a regional recycling facility. Neighborhood recycling facilities in the surrounding area include Earthwise Recycling and NexCycle.

The processing of approximately 4.2 million pounds of recyclable materials in 2008 at Garcia Recycling as indicated in the attachments to the letter from Miles+Chen Law Group dated July 12, 2010, exceeds the annual 2009 number of the following recycling facilities:

- Orange Coast College Recycling Center (2701 Fairview Road) - 3.9 million pounds (source: OCC August 17, 2010).
  - EarthWize Recycling (2180 Newport Boulevard) - 496,387 pounds (source: EarthWize Recycling August 16, 2010).
  - NexCycle (185 East 17<sup>th</sup> Street) - 283,315 pounds (source: NexCycle August 17, 2010).
- B. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines; and the City's environmental procedures, and has been found to be exempt from CEQA under Section 15321 for Enforcement Actions by Regulatory Agencies.
- C. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

**RESOLUTION NO. 10-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
COSTA MESA TO REVERSE THE PLANNING  
COMMISSION'S ACTION TO REVOKE ZONING  
APPLICATIONS ZA-89-25 AND ZA-92-10**

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WHEREAS, on September 7, 2010, City Council considered the appeal of ZA-89-25 and ZA-92-10, which was continued to the hearing of October 19, 2010;

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A," the City Council hereby **REVERSES** the Planning Commission's action to **REVOKE** Zoning Applications ZA-89-25 and ZA-92-10.

**PASSED AND ADOPTED this 19th day of October, 2010.**

\_\_\_\_\_  
ALLAN MANSOOR  
Mayor, City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY CLERK OF THE  
CITY OF COSTA MESA

\_\_\_\_\_  
CITY ATTORNEY

STATE OF CALIFORNIA)

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AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this \_\_\_\_ day of \_\_\_\_\_, 2010

**ATTACHMENT 2**  
**UPDATED GARCIA RECYCLING**  
**TIMELINE OF EVENTS FROM JULY**  
**2009 TO THE PRESENT AND EXHIBITS**

### Garcia Recycling Timeline of Events from July 2009 to the Present

<b>Date</b>	<b>Discussion</b>	<b>Progress</b>
July 30, 2009	Joint staff visit from Planning and Code Enforcement staff.	No visible progress.
August 3, 2009	City issued letter stating recycling center is violating CUP and requested: <ol style="list-style-type: none"> <li>1. Remove the truck staged at the property</li> <li>2. Install new signs</li> <li>3. Remove cashier from required landscape area and repair damaged landscaping.</li> <li>4. Ensure all staging and materials are contained inside the containers.</li> </ol>	No visible progress.
August 21, 2009	Received letter from recycling centers attorney requesting a meeting.	Meeting arranged.
September 3, 2009	Meeting held with applicant and City staff.	Applicant to follow up with staff.
September 14, 2009	Spoke with applicant's representative over phone.	Provided photos of sign examples and painted containers over email. Signs ok, provide onsite.
November 24, 2009	Meeting with applicant.	Containers painted and cleaned up signage.
March 18, 2010	City issued letter stating issues related to installation of a new cashier's unit, noise and landscape repairs that still need to be addressed. Applicant advised case will be forwarded to Code Enforcement if no further progress made.	No visible progress.
March 22, 2010	Call from applicant.	Different alternatives discussed.
April 1 & 5, 2010	Call from applicant.	Removed cashier's unit and removed illegal paving; however, replaced with artificial lawn. Not permitted.
April 7, 2010	Meeting with applicant and City staff.	Discussed possible different locations on property for recycling center.
April 12, 2010	Meeting with applicant and City staff.	Desired location (abutting 19 <sup>th</sup> St), not acceptable (was original location under ZA-89-25).
April 29, 2010	Meeting with applicant and City staff.	Restored live landscaping. Supposed to test different locations on property for functionality.
May 26, 2010	Call from applicant.	Wished to remain in current location and replace staged truck with 2 <sup>nd</sup> container and change out throughout day.
June 9, 2010	Planning Commissioner Mensinger called item up for review.	Scheduled for July 12, 2010 Planning Commission meeting.

Date	Discussion	Progress
June 15, 2010	Meeting with applicant.	Progress to date: <ol style="list-style-type: none"> <li>1. Removed cashiers unit.</li> <li>2. Installed landscaping.</li> <li>3. Painted units and cleaned up signage.</li> <li>4. 2<sup>nd</sup> container replaced staged truck (however only for week or two. Truck currently remains).</li> </ol> Remaining Violations: <ol style="list-style-type: none"> <li>1. Business being conducted outside containers.</li> <li>2. Truck still staging at site.</li> </ol>
August 13, 2010 to Present	Periodic inspections by Code Enforcement (see attached pictures).	One letter and three citations issued by Code Enforcement (see attached).
October 5, 2010	Administrative Hearing scheduled between the applicant and Code Enforcement.	Administrative Hearing held. Hearing officer to notify applicant of determination via mail in several days.